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C O N F I D E N T I A L SECTION 01 OF 03 KYIV 000906

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SUBJECT: UKRAINE: POLITICIANS CALCULATING ON
ELECTION/NEGOTIATION OUTCOMES

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Classified By: DCM for reasons 1.4(a,b,d).

¶1. (C) Summary. While President Yushchenko and Prime Minister Yanukovych continue to negotiate over whether there will be new Rada elections at some point this year, political playmakers from all parties are angling for best outcomes in the face of possible political compromise or snap elections. Opposition leader Tymoshenko, Our Ukraine MP and former party chair Bezsmertniy, Our Ukraine MP and financial backer Poroshenko, and Socialist Rada Foreign Affairs Committee Chairman Shybko all told the Ambassador in meetings April 11-12 that a negotiated political compromise was a better outcome than a Constitutional Court (CC) decision; they disagreed, however, over early elections. Tymoshenko and Bezsmertniy argued that early elections had to be part of the solution; Tymoshenko pushed for a summer rather than a fall vote, while Bezsmertniy adopted the Yushchenko line that the date is flexible as long as there was agreement on holding elections. Poroshenko, a representative of the OU wing interested in broad cooperation with the Party of Regions, and Shybko, whose Socialist party would be in danger of not crossing the three-percent threshold in a new election, both advocated a compromise that did not involve voting.

¶2. (C) Comment: Amidst uncertainty over how or whether the CC will rule, many key players continue to express preference for a political solution. Elections always produce winners and losers, and likely losers not surprisingly do not favor elections. Poroshenko has been edged out of OU's leadership over the past six months and would have even less influence after new elections; Shybko's comments underscore Socialist concern that they could be cut out of the political puzzle entirely after elections, with Regions, BYUT, and OU the main three forces likely to emerge if elections are held, and the Communists and Nataliya Vitrenko's Progressive Socialists, rather than the Socialists, with better chances of getting over the threshold. End summary and comment.

Tymoshenko: Court is Broken, Elections are Key

¶3. (C) Tymoshenko told Ambassador on April 12 that the CC was essentially hung; there were not currently ten judges able to agree to a decision. The coalition controlled nine judges--Regions three, the Socialists two, the Communists one, and former Presidential Chief of Staff Medvedchuk three. On the other side were the five "brave" judges who had publicly decried pressure--and who had the best legal reputations on the Court, she claimed--three other judges who felt the same way but didn't have the courage to say anything, and Court Chairman Dombrovskiy, who was "scared of his own shadow and did not want to do anything."

4, (C) Citing allegations emerging April 12 that two Deputy Court Chairmen loyal to Medvedchuk just came into ownership of expensive downtown Kyiv apartments, Tymoshenko claimed that the Court and process had been so compromised and politicized that a decision would be denounced by one side or the other. The key would be the Court session April 17, which she predicted would demonstrate the court's inability to decide anything. This should be the signal for parties to get serious about reaching a political compromise; she encouraged international reinforcement of this message.

¶ 5. (C) Tymoshenko advocated that the main political forces needed to agree on a menu of compromises in conjunction with elections and to ensure that the compromise avoids possible future crises. Tymoshenko advocated: a temporary 10-year imperative mandate to solidify party loyalty as Ukrainian politics develop; an improved CabMin law to clearly separate Presidential and PM powers on mutually acceptable terms; a law on the opposition; and a joint code of conduct to accept the results and not blockade the Rada (as both sides, including Tymoshenko's bloc, have done in the past year). Outside facilitators should not act publicly because that would complicate the process, but privately they could help facilitate talks and communications where there was no trust.

¶ 6. (C) While professing not to be a participant in talks, she understood Regions' current negotiating position as simultaneous Rada/presidential elections in the fall. Tymoshenko said that she had met Moroz two days ago and discussed a theoretical reconstitution of the OU-BYuT-Socialist coalition. She claimed the meeting was at Moroz's initiative, because he was worried about being cut out of the Presidential-PM negotiations and knew new elections were his political grave. Elections should not be postponed beyond late June/early July to the fall for three reasons: autumn was too close to December Russian Duma

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elections, creating a single electoral campaign field; it would allow Yanukovych to repeat his 2004 looting of the budget to boost social payments, effectively buying votes; and it would prolong the current dysfunctional political arrangement between Rada and the President, with the PM continuing to grab as much power as possible.

¶ 7. (C) Were elections to be held in the summer, she predicted Regions would get 22%, Communists 4%; far-left Vitrenko 4-5%; BYuT 25%; and OU/Lutsenko 15-17%. Yushchenko's numbers were rising because his western Ukrainian electorate liked the signs of a decisive leader taking action. The opposition needed to run in just two columns; she had already picked up Reforms and Order, but OU still needed Tarasyuk's Rukh and Kostenko's UPP. If the smaller parties choose to form a Union of Right Forces third column instead, they will strip 2% off of the orange vote and fail to get into the Rada (note: an assessment shared by OU's Bezsmertniy).

Bezsmertniy: We Took Strong, But Necessary Action

¶ 8. (C) The ever-cynical head of the People's Union Our Ukraine Executive Committee Bezsmertniy argued to Ambassador on April 11 that given the developments of past year, Yushchenko's decree was the only solution. The official laws on the books were not the ones that actually governed the country or the current situation. Yushchenko needed strong instruments and to act robustly and quickly. It was important now for all sides to recognize the decree as legal and start preparing for elections. The President's team now had to rally those presidential supporters who are not on board with implementing the elections and find motivations for Regions to participate in the elections. The date of the elections was unimportant--holding elections was crucial.

¶ 9. (C) In terms of logistics, Bezsmertniy claimed necessary

changes in the election law and CEC could be done without Rada approval or involvement. The current election law already empowered the CEC to run early elections; Yushchenko could issue additional decrees if need be to move the process forward. Somewhat cryptically, he added that there needed to be decisions taken regarding the PGO and some (unnamed) ministers. Yushchenko's camp also had to ensure that NSDC decisions were implemented (referring to the order to finance the elections), and that those who refused were held responsible. Finally, and validating rumors which had arisen a week ago, Yushchenko could "if necessary" recall the six CC judges on the presidential quota. Combined with two other judges who had recused themselves on April 10, would leave only 10 judges sitting, denying the Court of the necessary 12 to constitute a quorum. (Note: Poroshenko confirmed such thinking within parts of OU but thought such efforts would not be successful.)

Poroshenko: New Elections Bad, Political Compromise Needed

¶10. (SBU) Our Ukraine "oligarch" Poroshenko, who largely controlled OU's leadership in 2005-06 but was pushed aside in late 2006 in favor of Presidential Head Baloha and current party leader Vyacheslav Kyrylenko, who stripped regional OU branches of many Poroshenko allies, expressed grave concern about the current political situation April 12. He felt that neither pre-term elections nor a CC ruling could resolve the current impasse because in either case it would ultimately work to the benefit of the ruling coalition and hurt democracy in Ukraine. He saw compromise between the President and PM, facilitated by the international community, before the CC reached a decision, as the only way out of the crisis. He said he had told the President not to dissolve the Rada, but had found little support in OU.

¶11. (SBU) Poroshenko suggested time was not on Yushchenko's side--the economy is starting to suffer and an election would divide the country anew. Elections would not be supported by most of the country and would be impossible to organize by May 27. Yanukovych and Akhmetov had been willing to compromise right after Yushchenko signed the decree, but now Regions think they will win, either through a CC decision or early elections. In a matter of weeks, Poroshenko claimed, the coalition will have a majority in the CC; Yushchenko will not be able to refute the Court's decision and could even see impeachment proceedings started against him. The international community had to help break the two leaders' hardened positions and reach a compromise.

Shybko: We Do Not Want Elections

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¶12. (SBU) Socialist Party Member and Chairman of the Rada Foreign Affairs Committee Shybko argued against elections and placed the blame for the current situation squarely at the President's feet. Yushchenko was trying to block the CC from working--the President had met with the judges and if they were now refusing to work, they must be afraid of the President. (Note: Yushchenko met with the CC judges on March 27--one week before he issued the decree. A presidential statement released after the meeting reported that Yushchenko had urged them to defend the constitution and address a series of important cases which had been appealed to the court. End note.) The President's decree was unconstitutional, Shybko alleged; there was no mention of Article 90, which laid out the three specific circumstances under which the President can dismiss the Rada. Without this, there should not be early elections. If there were, however, Shybko insisted there must be concurrent early presidential elections and warned the Communists would insist on a referendum on NATO. A political compromise was a much better choice, Shybko argued; it would help Yushchenko save face. Shybko complained, however, that Yushchenko and

Yanukovych had excluded Moroz from their negotiations.

¶13. (U) Visit Embassy Kyiv's classified website:

www.state.sgov.gov/p/eur/kiev.

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